

Thursday, April 2, 2009

Division Two

**A122113 – In re the Marriage of Gilbert II and Amy Lynn Papazian. Gilbert Papazian II, v. Amy Lynn Papazian.**

The appeal is dismissed and appellant's request that we treat her appeal as a writ is denied. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A120628 – The People, v. William Russell Dawson.**

The order and judgment denying the People's motion for reinstatement is reversed. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

**A122598 – In re M.C., a Person Coming Under the Juvenile Court Law. The People, v. M.C.**

The appeal is hereby dismissed as moot. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Four

**A122162 – In re the Marriage of David M. Dellaria and Elizabeth L. Blickman-Dellaria. David M. Dellaria, v. Elizabeth L. Blickman.**

By The Court: It is ordered that the opinion filed herein on March 17, 2009, be modified as follows: On page 3, the first full paragraph, beginning "Briefly, the family home" and ending with "solely to Elizabeth," is modified to read in its entirety as follows: Briefly, the family home in San Rafael, California, which was held by David, was transferred solely to Elizabeth. There is no change in the judgment. Elizabeth's petition for rehearing is denied. Ruvolo, P.J. (Certified for Publication.)

Friday, April 3, 2009

Division One

**A121531 – The People, v. Antione Fowler.**

By The Court: The petition for rehearing is denied. Margulies, Acting P.J.

Division Three

Friday, April 3, 2009(Continued)

**A121652 – Margaret Elliott, v. Regents of The University of California et al.**

The judgment is affirmed. Respondents are entitled to recover their costs on appeal. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

Monday, April 6, 2009

Division Five

**A120959 – In re J.C., et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau, v. L.C., et al.**

The jurisdictional and dispositional orders as to D. and S. are affirmed. Needham, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Tuesday, April 7, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Fred Abad, Deputy Clerk, and CHP Officer Martin Fredericks, Bailiff.

- A123445    Gigi Marie Somers,  
              v.  
              None.  
Cause called and argued by Kristina Wertz, counsel for appellant. Cause ordered submitted.
- A121661    Michael R. Johnson,  
              v.  
              Maria N. Hosu.  
Cause called and argued by Michael Johnson, appellant in propria persona, and Michelene Insalaco, counsel for respondent. Cause ordered submitted.
- A121071    Tom Joseph Santos,  
              v.  
              Peerless Insurance Company.  
Cause called and argued by Jack Humes, Jr., counsel for appellant, and Rosemary Springer, counsel for respondent. Cause ordered submitted.
- A121390    Americans for Safe Access, et al.,  
A122619    v.  
              County of Alameda, et al.  
Cause called and argued by Tom Willis, counsel for appellants, and Gregory Luke, counsel for respondents. Cause ordered submitted.

Court adjourned until Wednesday, April 8, 2009 @ 9:00 a.m.

Tuesday, April 7, 2009(Continued)

Division Two

**A122050 – In re L.T. et al., Persons Coming Under the Juvenile Court Law.  
Contra Costa County Bureau of Children & Family Services, v. O.T., L.T. et al.**

The appeal is dismissed. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

Division Five

**A121721 – In re J.R., a Person Coming Under the Juvenile Court Law.  
Solano County Health and Social Services Department, v. N.R.**

The order terminating appellant's parental rights to J.R. is affirmed. Stevens, J.<sup>1</sup>  
We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

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<sup>1</sup> Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE  
Wednesday, April 8, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution., Raquel Arellano, Deputy Clerk, and CHP Officer Harjit Singh, Bailiff.

- A118799 People,  
v.  
Phillip Derespini.  
Cause called and argued by Meredith Fahn, counsel for appellant, and Stan Helfman, counsel for respondent. Cause ordered submitted.
- A121535 People,  
v.  
E. G.  
Cause called and argued by Anne Mania, counsel for appellant, and Michael Banister, counsel for respondent. Cause ordered submitted.
- A120569 Wajih Ajib,  
v.  
City of San Rafael.  
Cause called and argued via teleconference by John Ormond, counsel for appellant, and Richard Osman, counsel for respondent. Cause ordered submitted.
- A121561 Stephen Krivy,  
v.  
Albert Krivy.  
Cause called and argued by William Bergen, counsel for appellant, and Janet Boessenecker, counsel for respondent. Cause ordered submitted.
- A121254 Adeeba Mary Sabr,  
v.  
Heinz Voss.  
Cause called and argued by Heinz Voss, appellant in propria persona. Adeeba Sabr, respondent in propria persona failed to appear. Cause ordered submitted.  
Court adjourned.

Wednesday, April 8, 2009(Continued)

Division Three

**A114959 – International Association of Fire Fighters, Local 188, AFL-CIO, v. Public Employment Relations Board, City of Richmond, R.P.I**

By The Court: It is ordered that the opinion filed herein on March 18, 2009, be modified as follows: (See Order). The petition for rehearing is denied. McGuiness, P.J. (Certified for Publication.)

**A122599 – In re J.J., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. P.L.**

The orders denying mother's petition for modification (§ 388) and terminating her parental rights (§ 366.26) are affirmed. Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A121723 – Jamal Sanad, v. Mohsin Sharif.**

By The Court: It is ordered that the opinion filed herein on March 26, 2009, be modified as follows: (See Order). There is no change in the judgment. McGuiness, P.J. (Not for Publication.)

Thursday, April 9, 2009

Division One

**A121700 – The People, v. Brian Earl Turner.**

Accordingly, the judgment is affirmed.<sup>2</sup> Graham, J.<sup>3</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Four

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<sup>2</sup> Defendant also presented the issue in his opening brief of entitlement to 378 days of sentence credits. An augmentation of the record indicates that defendant "received his 378 days of credit," as he concedes. We therefore need not review the issue of credits on appeal.

<sup>3</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A117955 – The People, v. David Lawrence Dyke.**

Defendant's conviction of violating section 288.2, subdivision (a) (count I) is reversed, and the matter is remanded for resentencing. In all other respects, the judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Certified for Publication.)

Thursday, April 9, 2009(Continued)

Division Five

**A120331 – The People, v. Anthony Craig Smith.**

The conviction is affirmed. Dondero, J.<sup>4</sup> We Concur: Jones, P.J., Simons, J. (Certified for Publication.)

Friday, April 10, 2009

Division One

**A123445 – Gigi Marie Somers, v. Superior Court of San Francisco City and County.**

The order is reversed, and the matter remanded in order that Somers's petition for issuance of a new California birth certificate under section 103425 be considered on the merits. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>5</sup> (Certified for Publication.)

Division Two

**A117925 – The People, v. Demetri Chris Pappadopoulos.**

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

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<sup>4</sup> Judge of the Superior Court of San Francisco City and County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>5</sup> Retired judge of the Marin Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Three

**A122521 – The People, v. Curtis Anthony Goodwin, Jr.**

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J.  
(Not for Publication.)

**A118999 – The People, v. David Mark Levey.**

The trial court is directed to correct the abstract of judgment to include four days of conduct credits, and to forward a copy of the corrected judgment to the California Department of Corrections. The judgment is otherwise affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Friday, April 10, 2009(Continued)

Division Five

**A120442 – The People, v. Robert Chavarria.**

The judgment is affirmed. Stevens, J.<sup>6</sup> We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

**A121725 – Bankers Life and Casualty Company, v. Crystal J. Williams, Kenneth P. Knoles.**

The judgment is reversed. Appellant is entitled to costs on appeal. Simons, J., We Concur: Jones, P.J., Stevens, J.<sup>7</sup> (Not for Publication.)

**A120631 – The People, v. Pablo Ramirez.**

The no-contact order against appellant is ordered stricken. The judgment is otherwise affirmed. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Monday, April 13, 2009

Division One

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<sup>6</sup> Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>7</sup> Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



**A122392 – The People, v. Wendy Cruz.**

The judgment of conviction and the sentence are affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>8</sup> (Not for Publication.)

**A121535 – In re E.G., a Person Coming Under the Juvenile Court Law. The People, v. E.G.**

The jurisdictional and dispositional findings regarding the crimes committed December 10, 2007 are affirmed. The jurisdictional finding of felony vandalism is reduced to a finding of misdemeanor vandalism. The gang benefit enhancement to the vandalism charge is stricken. The jurisdictional finding of active gang participation on December 13, 2007 is reversed. The matter is remanded for proper disposition. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>9</sup> (Not for Publication.)

Monday, April 13, 2009(Continued)

Division Two

**A122746 – The People, v. Raymond Earl Ashcraft.**

The judgment and sentence imposed are affirmed. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A121373 – In re Charles N., a Person Coming Under the Juvenile Court Law. Lake County Department of Social Services, v. George N. et al.**

The termination order is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A123697 – Grant Richards et al., v. The Superior Court of San Francisco County, Brian Hurley et al., R.P.I.**

The accelerated *Palma* procedure is appropriate "when petitioner's entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue." (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see also *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, and 1240-1241.) The briefing has adequately addressed the dispositive issue presented, whether the motion to compel was timely. It was not Furthermore, the need for prompt action also supports the issuance of a peremptory writ. (*Bolles v. Superior Court* (1971) 15 Cal.App.3d 962,

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<sup>8</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>9</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

963.) Here, the parties' trial date was vacated because this discovery issue was not previously resolved. The efficient resolution of this discovery issue will facilitate a speedier conclusion of this litigation. Consequently, let a peremptory writ mandate issue commanding respondent superior court to vacate only that portion of its December 30, 2008 order granting in part the motion to compel and requiring the production of documents identified as document Nos. 13-16, 18-30, and 191-193 on petitioner's privilege log and to enter a new and different order denying that part of said motion. The January 15, 2009 stay issued by this court is dissolved. Jenkins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A120636 – The People, v. Marcel Lewis.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Certified for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Monday, April 13, 2009

The court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Bobby Singh, Bailiff.

A122463     John Kast  
              v.  
              Anna K. Antonsson  
Cause called. In pro per Anna K. Antonsson argued. Kevin P. Greenquist argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, J., and Sepulveda, J.

A121073     Linda Aurichio  
              v.  
              Howard Menashe  
Cause called. Harold P. Smith argued for appellant Menashe. Cary Lee Dictor argued for respondent. Cause submitted.

A120188     People  
              v.  
              Francisco Ramirez  
Cause called. Maribeth Halloran argued for appellant Ramirez. Christopher Grove argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, and Rivera, J.

A121190     People  
              v.  
              Billy Vassiliou  
Cause called. Paul Kleven argued for appellant Vassiliou. Christopher Grove argued for respondent. Cause submitted.

Court recessed at 10:28 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, April 13, 2009

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Marty Fredericks, Bailiff.

A120774

People

v.

Jeffrey Brice Ogle

Cause called. Randall Conner argued for appellant Ogle. Chris Wei argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

A119368

People

v.

Romero Lamar Malone

Cause called. Kari E. Hong teleargued for appellant Malone. Bruce Ortega argued for respondent. Cause submitted.

Court adjourned at 2:03 p.m.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Tuesday, April 14, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., and Siggins, J.; and B. Robbins, Deputy Clerk.

A118019    The People,  
              v.  
              Zubair Ahmad Shah.  
Cause called and argued by Barry M. Karl, counsel for appellant, and Catherine A. Rivlin, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench and Justice Jenkins joined the bench. Justice Pollak presided over the remainder of the morning session.

A121770    The People,  
              v.  
              Kevin Tyrone Buford.  
Cause called and argued by Masha Dabiza, counsel for appellant, and Oliver Northup, Jr., counsel for respondent. Cause ordered submitted.

A120488    Jacquelyn Fries, Minor, etc.,  
              v.  
              Rite Aid Corporation, et al.  
Cause called and argued by Joseph L. Schatz, counsel for appellant, and Thomas Hocker, counsel for respondents. Cause ordered submitted.

A120741    Financial Pacific Insurance Company,  
              v.  
              Kim Northrup, et al.  
Cause called and argued by William Gutierrez, counsel for appellants, and Mark Divelbiss, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

Wednesday, April 15, 2009

Division Two

**A122859 – Phyllis Oden, v. Department of Social Services State of California Community Care Licensing Division.**

The order denying the write petition as moot is affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Four

**A121487 – Joseph Royse, v. Jonathan Phelps et al.**

The judgment is affirmed. The purported appeal from the order denying the motion for a new trial is dismissed. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A118565 – Oz Optics Limited et al., v. Zeynep Hakimoglu.**

The judgment is affirmed. Each part is to bear its own costs. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

**A120492 – General Mills et al., v. Franchise Tax Board.**

The judgment denying General Mills' claims for tax refunds is vacated. The case is remanded to the trial court for further proceedings consistent with the views expressed in this opinion. The Franchise Tax Board shall pay General Mills' costs on appeal. Stevens, J.<sup>10</sup> We Concur: Jones, P.J., Simons, J. (Certified for Publication.)

Thursday, April 16, 2009

Division Two

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<sup>10</sup> Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A124294 – Advanced Nutrients, v. Robert Hunter et al.**

The appeal is dismissed. Respondents are awarded their costs on appeal. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

Thursday, April 16, 2009(Continued)

**A120776 – In re Adam C., a Person Coming Under the Juvenile Court Law.  
The People, v. Adam C.**

The order appealed from is affirmed. The case is remanded for a declaration by juvenile court as to whether count 2, possession of a firearm by a minor, is a felony or a misdemeanor. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A120258 – Terry McMillan, v. Jonathan Plummer.**

**A120260 – Terry McMillan, v. Jonathan Plummer et al.**

The judgment is affirmed. McMillan is entitled to the costs of Plummer's appeal. McMillan is to pay the costs of her appeal. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A122499 – Alanna Spencer, v. Ryan Marshall et al.**

The judgment is affirmed. Spencer is to pay the costs of appeal. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Thursday, April 16, 2009

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Richman, J., Officer Singh and I. Santos, Deputy Clerk.

A117321 Ronald Hogan et al.,  
v.  
DeAngelis Construction Inc. et al.

A118257 Ronald Hogan et al.,  
v.  
Marvin DeAngelis et al.

A120840 Ronald Hogan et al.,  
v.  
DeAngelis Construction Inc. et al.  
Cause called and argued by Joseph Klobas, counsel for appellants Ronald and Victoria Hogan, Jewell Hargleroad, counsel for respondents DeAngelis Construction Inc. et al., and Michael D. Maloney, counsel for respondents and cross-appellants Signature Properties and Engstrom et al. Cause ordered submitted.

**Court recessed until 1:30 p.m.**



## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Thursday, April 16, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Richman, J., Officer Singh and I. Santos, Deputy Clerk.

At the beginning of the proceedings, Presiding Justice Kline announced that he was only on the panel for the first case and that Justice Richman was not on the panel. The remainder of the cases would consist of Justices Haerle, Lambden and Richman.

A120298      The People,  
                  v.  
                  Lamar Donell Kirkland.  
Cause called and argued by Russell A. Robinson, counsel for appellant, and Sara Turner, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Presiding Justice Kline left the bench.

A118442      State Route 4 Bypass Authority,  
                  v.  
                  Irwin Pomeroy et al.  
Cause called and argued by Scott Jenny, counsel for appellant, and Pamela Schock Mintzer, counsel for respondent. Cause ordered submitted.

A121395      Alliance for McKillop Road et al.,  
                  v.  
                  City of Oakland et al.  
Cause called and argued by James O. Devereaux, counsel for appellants, and David Lee, counsel for respondents. Cause ordered submitted.

**Court Adjourned.**

Thursday, April 16, 2009(Continued)

Division Three

**A120549 – The People, v. Scott Ralph Strack.**

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J.  
(Not for Publication.)

**A120272 – George More, v. Meridian Commerical et al.**

By The Court: Defendants' petition for rehearing modification or other appropriate relief is denied. McGuiness, P.J.

Friday, April 17, 2009

Division Three

**A121732 – In re the Marriage of Monique Baylocq and Thomas A. Wilberding, Jr. Monique BaylocqWilberding, v. Thomas A. Wilberding, Jr.**

There is substantial evidence in the record in support of the trial court's judgment. We find that there was no abuse of discretion. The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A118542 – Richard Soroori, v. Lillie Jue et al.**

By The Court: The petition for rehearing is denied. McGuniess, P.J.

Division Four

**A120188 – The People, v. Francisco Ramirez.**

The judgment is affirmed. Reardon, J., We Concur: Ruvalo, P.J., Sepulveda, J.  
(Not for Publication.)

**A121506 – The People, v. Floyd Akeem Cummings.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvalo, P.J., Reardon, J.  
(Not for Publication.)

Division Five

**A119316 – Dennis Koepnick, v. Kashiwa Fudosan America, Inc.**

Friday, April 17, 2009(Continued)

The judgment is affirmed. Koepnick is entitled to costs on appeal. Simons, Acting P.J., We Concur: Needham, J., Stevens, J.<sup>11</sup> (Certified for Publication.)

**A121817 – Abernathy Valley, Inc., v. County of Solano.**

We reverse the judgment of the trial court and direct that the petition for a writ of mandate be denied. The County of Solano is entitled to costs on appeal. Stevens, J.<sup>12</sup> We Concur: Jones, P.J., Needham, J. (Certified for Publication.)

Monday, April 20, 2009

Division One

**A121700 – The People, v. Brian Earl Turner.**

By The Court: It is ordered that the opinion filed herein on April 9, 2009, be modified in the following particulars: 1. On page 3, the last sentence of the first paragraph, the word "Defendant" is deleted and the word "Barbarin" is inserted. The sentence will now read: Barbarin identified the shooter to Juanesta as "someone named 'B'." There is no change in the judgment. Margulies, Acting P.J. (Not for Publication.)

Division Two

**A113020 – The People, v. James Ary, Jr.**

For the foregoing reasons, the case is remanded to the trial court to evaluate the evidence under the proper burden of proof.<sup>13</sup> If, after imposing that burden, the court

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<sup>11</sup> Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>12</sup> Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>13</sup> We are mindful of the view of some that "trial courts are reluctant to find that a convicted defendant had been incompetent to plead or to stand trial, [because that] would, of course, mean that a completed procedure (trial or guilty plea) would have to be overturned and the process begun again," and that "[i]t is clearly easier for an appeals

determines defendant was competent to stand trial at the time he was tried and convicted, it shall reinstate the judgment. If it concludes defendant was not then competent, it shall entertain such appropriate motions as may be made by the parties. Kline, P.J., I Concur: Lambden, J., (See concurring opinion by J. Haerle). (Certified for Publication.)

Monday, April 20, 2009(Continued)

**A122109 – The People, v. John Leopold Adams.**

Accordingly, we have reviewed the entire record in these proceedings and find no arguable issues. The record reflects that appellant was respected by counsel at all relevant times and that appellant was informed of his rights at all critical junctures. Substantial evidence supported the conviction with reference to all three proceedings, and it appears that the credit for time served and sentences were calculated in a proper fashion. The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A121002 – Audrey Manuel et al., v. Pacific Gas & Electric Co.**

The summary judgment is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A121645 – The People, v. Obadiah Dartagnan Lomalynda.**

We find no error. The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

**A120205 – The People, v. Sergio Chan-Tapia.**

By The Court: The petition for rehearing is denied. McGuiness, P.J.

Division Five

**A122148 – In re P.M., a Person Coming Under the Juvenile Court Law. The People, v. P.M.**

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court to make such a decision." (Miller & Germain, *The Retrospective Evaluation of Competency to Stand Trial*, *supra*, 11 Int'l. J. of Law & Psych. At p. 120.) Defendant has not expressed this view, however, and we have no reason to think the trial judge in this case will elevate expediency over his view of the evidence.

The matter is remanded to the juvenile court to allow the court to exercise its discretion to determine whether appellant's violation of Penal Code section 496, subdivision (a), was a misdemeanor or felony. The court shall recalculate the maximum period of confinement as necessary in accordance with its determinations. In all other respects, the judgment is affirmed. Stevens, J.<sup>14</sup> We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A119028 – The People, v. Luis E. Bermudez.**

By The Court: It is ordered that the published portion of the opinion filed herein on march 27, 2009, be modified as follows: (See Order). There is no change in the judgment. Respondent's petition for rehearing is denied. Simons, Acting P.J. (Certified for Publication.)

Tuesday, April 21, 2009

Division Two

**A122322 – In re Kendall R., a Person Coming Under the Juvenile Court Law. Mendocino County Health & Human Services Agency, v. L.R.**

The appeal is dismissed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Five

**A119531 – The People, v. Mark Ernest Danzart.**

The judgment is affirmed. Stevens, J.<sup>15</sup> We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

Wednesday, April 22, 2009

Division Two

**A120230 – Lili Silvera et al., v. Lawrence Wong, Individually and as Trustee, etc.**

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<sup>14</sup> Retired associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>15</sup> Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A114961, A116750, A117270 – In re the Marriage of Gilbert II and Amy Lynn Papazian. Gilbert Papazian II, v. Amy Lynn Papazian.**

With the exception of the limited remand of this matter to correct the error regarding the court's December 6, 2006, order, the orders appealed from are affirmed. Costs on appeal are awarded to respondent. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A122051 – In re J.W., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency, v. S.S.**

The challenged order of May, 15, 2008, is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A120987 – Yvette Munoz et al., v. City of Union City et al.**

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Richman, J. (Certified for Publication.)

Wednesday, April 22, 2009(Continued)

**A123657 – The People, v. Harold Joseph Powell.**

The judgment of conviction is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A118019 – The People, v. Zubair Ahmad Shah.**

The judgment is affirmed. Pollak, J., We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

**A123706 – The People, v. Jerry Mark Rodriguez.**

The judgment is affirmed. Siggins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

**A120488 – Jacquelyn Fries, a Minor, etc., v. Rite Aid Corporation et al.**

The order and judgment awarding costs are affirmed in their entirety. The postdismissal discovery orders are void and, therefore, are reversed. Parties are to bear

their own costs on appeal. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J.  
(Certified for Publication.)

**A118999 – The People, v. David Mark Levey.**

By The Court: The petition for rehearing is denied. McGuiness, P.J.

**A121723 – Jamal Sanad, v. Mohsin Sharif.**

By The Court: The petition for rehearing is denied. McGuiness, P.J.

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Wednesday, April 22, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Bruiniers, J.,\* and Joshua Chow, Deputy Clerk.

A118596 Alameda Belt Line,  
v.  
City of Alameda,  
Cause called and argued by Dean Ewell Dennis, counsel for appellant, and by Michael William Stamp, counsel for respondent. Cause ordered submitted.

A121331 Barbara S. Chapman,  
v.  
Trustees of the California State University,  
Cause called and argued by Barbara S. Chapman, appellant, and by Chris Knudsen, counsel for respondent. Cause ordered submitted.

A120168 Lee Barfield et al.,  
v.  
Ecology Control Industries Inc.,  
Cause called and argued by James earl Prosser, counsel for appellant, and by Michael Paul Guta, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Bruiniers left the bench and Justice Needham entered.

A118806 JP Morgan Chase Bank,  
v.  
City and County of San Francisco,  
Cause called and argued by Robert William Fischer, counsel for appellant, and by James Emery, counsel for respondent. Cause ordered submitted.



A122105 Andrew D. Smith et al.,  
v.  
Novato Unified School District et al.,  
Cause called and argued by , counsel for appellants, and by Dennis Walsh and Stephen  
Birgel, counsels for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons left the bench and Justice Bruiniers entered.

A119246 The People,  
v.  
Edward James Munoz,  
Cause called and argued by Stephen B. Bedrick, counsel for appellant, and by Violet M.  
Lee, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Simons entered.

A119937 Patricia Messner,  
v.  
City of Oakland et al.,  
Cause called and argued by Gerald C. Sterns, counsel for appellant, and by Christopher  
Andrew Kee, counsel for respondent. Cause ordered submitted.

Court adjourned at 12:01 p.m.

\*Judge from Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article  
VI, section 6 of the California Constitution.

Thursday, April 23, 2009

Division One

**A120321 – Theodore W. Wilson, v. Segundino O. Obedoza, M.D.**

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>16</sup> (Not for Publication.)

Division Two

**A123183 – The People, v. Dustin Hernandez.**

The judgment is affirmed. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

**A121770 – The People, v. Kevin Tyrone Buford.**

The trial court's decision to deny the People's motion to reinstate the complaint is reversed, and the matter is remanded with directions to the trial court to deny defendant's motion to suppress evidence and to reinstate the complaint. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

**A122925 – In re M.M., a Person Coming Under the Juvenile Court Law. Solano County Health & Social Services Department, v. M.M.**

The orders of the juvenile court are affirmed. Siggins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A119263, A119720 – Yaire Lopez, v. Bimbo Bakeries USA, Inc.**

The judgment is affirmed. (Case No. A119263.) The postjudgment order awarding plaintiff attorney fees is also affirmed. (Case No. A119720.) Plaintiff is entitled to costs on appeal. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

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<sup>16</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, April 24, 2009

Division Three

**A121826 – The People, v. Mark Facun Abella.**

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A121977 – In re S.A. et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services, v. S.L.**

By The Court: The petition for rehearing is denied. McGuiness, P.J.

**A119737 – The People, v. Dangelo Antonio Jerome.**

The judgment is reversed and the matter is remanded for further proceedings. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

Division Four

**A119331 – John Hsu, v. California Department of Personnel Administration, California Department of Toxic Substances Control, R.P.I.**

The appeal against DPA is dismissed as moot. In all other respects, the judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

**A122450 – County of Sonoma, v. The Superior Court of Sonoma County, Sonoma County Law Enforcement Association, R.P.I.**

The order to show cause is discharged. The petition for writ of mandate is granted. Let a peremptory writ of mandate issue commanding respondent superior court to (1) vacate the portions of its order of August 1, 2008 granting SCLES's petition to compel arbitration and ruling in SCLEA's favor on the cross-motions for judgment on the pleadings as to the first cause of action in the County's cross-complaint for declaratory relief, and (2) enter a new and different order denying SCLEA's petition to compel arbitration and granting the County's cross-motions for judgment on the pleadings as to the first cause of action in the County's cross-complaint. The County is entitled to recover its costs in this writ proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(A).) The

previously issued stay shall dissolve upon issuance of the remittitur. Jones, P.J., We Concur: Simons, J., Stevens, J.<sup>17</sup> (Certified for Publication.)  
Friday, April 24, 2009(Continued)

**A120894 – The People, v. Michael Edward Holt.**

The judgment is affirmed. Stevens, J.<sup>18</sup> We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

Monday, April 27, 2009

Division One

**A115725 – The People, v. Scott Edgar Dyleski.**

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Pollak, J.<sup>19</sup> (Not for Publication.)

**A123522 – In re T.W., a Person Coming Under the Juvenile Court Law. The People, v. T.W.**

The jurisdictional and dispositional findings and orders are affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>20</sup> (Not for Publication.)

**A120495 – The People, v. Larry Clyde Davis.**

The judgment of conviction is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>21</sup> (Not for Publication.)

Division Two

**A118547 – In re Edward S., a Person Coming Under the Juvenile Court Law. The People, v. Edward S.**

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<sup>17</sup> Retired Associate Justice of the Court of Appeal, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>18</sup> Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>19</sup> Associate Justice of the Court of Appeal, First Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>20</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>21</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

For the foregoing reasons, the judgment is reversed and the matter is remanded to the Humboldt County juvenile court with directions to conduct a new jurisdictional hearing. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Certified for Publication.)

**A121395 – Alliance for McKillop Road et al., v. City of Oakland et al.**

Monday, April 27, 2009(Continued)

The judgment is affirmed. The homeowners are to pay the costs of appeal. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

Division Four

**A123278 – In re T.M., a Person Coming Under the Juvenile Court Law. The People, v. T.M.**

The dispositional order is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

**A121190 – The People, v. Billy Vassiliou.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

**A123999 – In re A.G. et al., Persons Coming Under the Juvenile Court Law. T.H., v. The Superior Court for the City and County of San Francisco, San Francisco County Department of Human Services, R.P.I.**

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to orders terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (1).) Because the section 366.26 hearing is set for May 6, 2009, our decision is final as to this court immediately. (Rule 8.490(b)(3).) Jones, P.J., We Concur: Simons, J., Bruiniers, J.<sup>22</sup> (Not for Publication.)

Tuesday, April 28, 2009

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<sup>22</sup> Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division One

**A122745 – The People, v. Paul Lamont Smith, Jr.**

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>23</sup> (Not for Publication.)

Tuesday, April 28, 2009(Continued)

**A121561 – Stephen Krivy, v. Albert Krivy, as Trustee, etc.**

The probate court's decision overruling Stephen's objection to the payment of the fees of the trustee's attorney is reversed, and the matter is remanded for a hearing on the propriety of those payments. The order of the probate court settling and approving the final accounting and overruling Stephen's objections is otherwise affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>24</sup> (Not for Publication.)

**A122665 – In re J.C., a Person Coming Under the Juvenile Court Law. The People, v. J.C.**

The judgment (dispositional order) is reversed, and the case is remanded for further proceedings in compliance with section 790 et seq. If the juvenile court grants DEJ to defendant, it shall issue and order vacating the judgment, and determine whether to reinstate the dependency case. If DEJ is denied, the court shall order the judgment continued in effect, subject to defendant's right to have the judgment and the denial of DEJ reviewed on appeal. If and when judgment is entered, the court shall specify whether the offense was a felony or a misdemeanor. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>25</sup> (Not for Publication.)

**A117410 – The People, v. Latanya White.**

The order for probation is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>26</sup> (Not for Publication.)

Division Two

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<sup>23</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>24</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>25</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>26</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A116443 – The People, v. Manuel Salvador Garcia.**

The judgment is affirmed. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A119779 – The People, v. Loeun Sa.**

The judgment is affirmed. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

**A122613 – The People, v. Deante Dekhoura Stewart.**

Tuesday, April 28, 2009(Continued)

The judgment of conviction is affirmed. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A121547 – The People, v. Scott Henry Andrieux.**

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

**A120741 – Financial Pacific Insurance Company, v. Kim Northrop.**

The trial court's order sustaining without leave to amend the demurrer to the claims in the FACC is affirmed. The trial court's order granting FPIC summary judgment on its affirmative claims for breach of contract and indemnification is affirmed. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

**A120378 – Brian P. Burns, v. The Neiman Marcus Group, Inc.**

The judgment is affirmed. Defendant is awarded costs on appeal. Jenkins, J., I Concur: McGuiness, P.J. (See Concurring opinion by J. Pollak). (Certified for Publication.)

Division Four

**A122463 – John Kast v. Anna Karin Antonsson.**

The order denying appellant's motion to remove the Special Master is affirmed. Costs on appeal are awarded to respondent. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A119095 – The People, v. Remus Sam Langi.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)



MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT, DIVISION FOUR

Tuesday, April 28, 2009

The court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Annie Reasoner, Deputy Clerk; CHP Officer Tammy Smith, Bailiff.

A120686      Floro Zarate, et al,  
                 v.  
                 Rodelo Manuel, et al  
Cause called.    Orrin Grover, III argued (via telephone) for appellants Manuel, et al.    Gregory Jung argued for respondents Zarate, et al. Cause submitted.

A121842      People of the State of California  
                 v.  
                 Toby James Coleman  
Cause called.    Ozro Childs argued for appellant Coleman.    Deputy Attorney General Linda Murphy argued for respondent. Cause submitted.

A120992      People of the State of California  
                 v.  
                 Adam Daniel Mrozek  
Cause called.    Meredith Fahn argued for appellant Mrozek.    Deputy Attorney General Gregg Zywicke argued for respondent. Cause submitted.

At this point, Sepulveda, J. left the bench and Rivera, J. joined the bench. Argument continued before Ruvolo, P.J., Reardon, J., and Rivera, J.

A122390      Citibank  
                 v.  
                 Clive Yang, et al  
Cause called.    Charles Kagay argued for appellants Clive Yang, et al. David Chute argued for respondent Citibank. Cause submitted.

*Court was adjourned at 10:18 a.m.*

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Tuesday, April 28, 2009

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Sepulveda, J., and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Bobby Franklin, Bailiff.

- A118255      In re the Marriage of James Heierle and Yupa Assawasuksant  
James Heierle  
v.  
Yupa Assawasuksant  
Cause called. Barbara Kauffman argued for appellant Assawasuksant. David Ostiller argued for respondent Heierle. Cause submitted.
- A119074      People of the State of California  
v.  
Kenneth Perry  
Cause called. Demetrius Costy argued for appellant Perry. Deputy Attorney General Eric Share argued for respondent. Cause submitted.
- A118640      People  
v.  
Albert Feaster  
Cause called. Barry Karl argued for appellant Feaster. Deputy Attorney General Seth K. Schalit argued for respondent. Cause submitted.
- A119420      People  
v.  
Achi Ben Shalom  
Cause called. Paul Kleven argued for appellant Ben Shalom. Deputy Attorney General Margo Yu argued for respondent. Cause submitted.

At this point, Ruvolo, P.J. left the bench and Reardon, J. joined the bench. Argument continued before Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

- A115775      *Continued on next page*  
People  
v.  
Demarco Ralls

Cause called. Mark Greenberg argued for appellant Ralls. Deputy Attorney General Frances Dogan argued for respondent. Cause submitted.

Court was adjourned at 2:45 p.m.

Tuesday, April 28, 2009(Continued)

Division Five

**A119937 – Patricia Messner, v. City of Oakland et al.**

The judgment is affirmed. Needham, J., We Concur: Simons, Acting P.J., Bruiniers, J.<sup>27</sup> (Not for Publication.)

**A122226 – The People, v. Thomas Gore McEntyre.**

The judgment is affirmed. Jones, P.J., We Concur: Needham, J., Bruiniers, J.<sup>28</sup> (Not for Publication.)

Wednesday, April 29, 2009

Division One

**A121661 – In re the Marriage of Michael R. Johnson and Maria N. Hosu. Michael R. Johnson, v. Maria N. Hosu.**

The orders entered on May 7, 2008, are affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>29</sup> (Not for Publication.)

**A122616 – In re R.S., a Person Coming Under the Juvenile Court Law. Napa County Health and Human Services Agency, v. R.S. et al.**

The order of August 25, 2008, is affirmed. Graham, J.<sup>30</sup> We Concur: Marchiano, P.J., Margulies, P.J. (Not for Publication.)

**A121059 – The People, v. Jose Napoleon Beteta.**

The trial court is directed to amend the abstract of judgment as follows: (1) to strike the fine imposed pursuant to section 1202.45; (2) to correct the fine amount imposed under section 1202.4, subdivision (b); (3) to include the amount imposed for

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<sup>27</sup> Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>28</sup> Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>29</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>30</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

victim restitution; and (4) to reflect 798 days of presentence custody credit. The trial court shall forward a copy of the amended abstract of judgment of the Department of Corrections and Rehabilitation. In all other respects, the

Wednesday, April 29, 2009(Continued)

judgment is affirmed. Graham, J.<sup>31</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A122401 – In re J.L. & L.L., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. A.L.**

The judgment is affirmed. Graham, J.<sup>32</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A118799 – The People, v. Phillip Joseph Derespini.**

Accordingly, the judgment is affirmed. Graham, J.<sup>33</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A121030 – The People, v. Toni Zimmer-Davis.**

The judgment is affirmed. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

**A122493 – Luzviminda U. Senas, v. California Unemployment Insurance Appeals Board.**

The order is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A122814 – In re E.G., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau, v. B.F.**

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<sup>31</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>32</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>33</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The order is affirmed. Richman, J., We Concur: Harele, Acting P.J., Lambden, J.  
(Not for Publication.)

Division Three

**A122806 – In re J.L., a Person Coming Under the Juvenile Court Law. The People, v. J.L.**

The juvenile court's jurisdictional and dispositional orders are affirmed.  
McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)  
Wednesday, April 29, 2009(Continued)

**A122267 – The People, v. Hector Cintron.**

The judgment is affirmed. McGuiness, P.J., We Concur: Pollak, J., Siggins, J.  
(Not for Publication.)

**A122863 – The People, v. Selester Rowe.**

The judgment and order revoking probation and imposing a three-year sentence are affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A122397 – In re J.T., a Person Coming Under the Juvenile Court Law. The People, v. J.T.**

The order committing J.T. to the department is affirmed. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, April 29, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., Siggins, J. and Jenkins, J.; and F. Castuera, Deputy Clerk.

A117627 Matthew Morrison,

v.

Sequoia Ventures.

During the proceedings, Siggins, J. sat on the bench but did not participate. Cause called and submitted on their brief by appellant Raghda Zacharia, In Pro Per, and Michael Fish for respondent. Cause ordered submitted.

At this point in the proceedings, McGuiness, P.J. remained on the bench but did not participate; and Pollak, Acting PJ. presided the next case. Siggins, J. joined the proceedings.

A122333 John Nutt,

v.

U.S. Food Service et. al.

Cause called and argued by Christopher Dolan, counsel for appellant, and Sarah Mott, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, McGuiness, P.J. presided the last case and Pollak, J. left the bench.

A121256 Deana Short,

v.

Sequoia Ventures.

Cause called and counsel for appellant was not present. Paul Fogel, counsel for respondent submitted the case on their brief. Cause ordered submitted.

COURT ADJOURNED

Wednesday, April 29, 2009(Continued)

Division Four

**A114514 – The People, v. Ezekiel Johnson.**

The 10-year enhancement imposed on count 1 pursuant to section 186.22, subdivision (b)(1), is ordered stricken. The abstract of judgment shall be modified to reflect a sentence on count 1 of 25 years to life, with a minimum parole eligibility of 15 years. The abstract of judgment also shall be modified to reflect that the one-year term imposed was for defendant's prison prior (§ 667.5, subd. (b)) and not for the gang enhancement (§ 186.22, subd. (b)(1)). The abstract should reflect a total term of 26 years to life. The trial court is directed to prepare an amended abstract of judgment, and a certified copy of the modified abstract shall be forwarded to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

**A123471 – The People, v. Scott Eugene George.**

The judgment is affirmed. Simons, Acting P.J., We Concur: Needham, J., Bruiniers, J.<sup>34</sup> (Not for Publication.)

**A121583 – In re Nicolas C., a Person Coming Under the Juvenile Court Law. The People, v. Nicolas C.**

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Bruiniers, J.<sup>35</sup> (Not for Publication.)

**A119246 – The People, v. Edward James Munoz.**

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Bruiniers, J.<sup>36</sup> (Not for Publication.)

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<sup>34</sup> Judge of the Contra Costa Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>35</sup> Judge of the Contra Costa Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>36</sup> Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



**A123000 – In re Giovanni S., a Person Coming Under the Juvenile Court Law. The People, v. Giovanni S.**

The order are affirmed. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Wednesday, April 29, 2009(Continued)

**A123146 – The People, v. Bryan Scott Granados.**

The court's probation order is modified to eliminate any requirement that appellant pay the probation supervision fee as a condition of probation. The court's order that appellant pay such fee, however, is affirmed. In all other respects the judgment is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

**A123100 – In re K.D., a Person Coming Under the Juvenile Court Law. The People, v. K.D.**

The disposition is affirmed. Jones, P.J., We Concur: Needham, J., Bruiniers, J.<sup>37</sup> (Not for Publication.)

Thursday, April 30, 2009

Division One

**A122042 – The People, v. Steven Ross Smith.**

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J. (Not for Publication.)

**A121071 – Tom Joseph Santos, v. Peerless Insurance Company.**

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>38</sup> (Not for Publication.)

**A118793 – Joel Thomas Toler, v. Janet Dostal et al.**

Accordingly, the judgment is affirmed. Graham, J.<sup>39</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

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<sup>37</sup> Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>38</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Two

**A122702 – The People, v. Solomon Ramirez.**

The judgment of conviction is confirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

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**A121996 – The People, v. Clayton Lee Winfrey.**

The judgment is confirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A119999 – The People, v. David Murphy.**

The trial clerk is ordered to amend the abstract of judgment to stay the terms on county two and three pursuant to section 654 and to amend it to impose two enhancements under section 667.5, subdivision (b) only on the indeterminate sentences. The judgment is otherwise affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

**A121256 – Deanna Short et al., v. Sequoia Ventures, Inc.**

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

**A124046 – J.A., v. The Superior Court of San Francisco County, San Francisco County Department of Human Services, R.P.I.**

The request for stay is denied, and the petition for extraordinary writ is denied on the merits. The decision is final in this court immediately. (California Rules of Court rule 8.264(b)(3).) Jenkins, J., We Concur: Pollak, acting P.J., Siggins, J. (Not for Publication.)

**A117627 – In re the Marriage of Matthew J. Morrison and Raghda H. Matthew J. Morrison, v. Raghda H. Zacharia.**

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<sup>39</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment is affirmed. Father shall recover his costs on appeal. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

**A122419 – In re D.S., a Person Coming Under the Juvenile Court Law. Contra Costa County Child and Family Services Bureau, v. A.S.**

The dispositional order is affirmed. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

Division Four

**A120774 – The People, v. Jeffrey Brice Ogle.**

The matter is remanded to the trial court for resentencing with directions to vacate appellant's conviction for Counts 11 and 18, possession of child pornography (§ 311.11, subd. (a)). The trial court is also directed to vacate

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appellant's conviction for Count 3, attempted possession of child pornography (§ § 664; 311.11, subd. (a)), the lesser included offense of possession of child pornography (§ 311.11, subd. (a)). In all other respects, the judgment is affirmed. Ruvalo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

**A122803 – Richard B. Fox, v. California Physicians' Service.**

The judgment is affirmed. Blue Shield is entitled to its costs on appeal. Sepulveda, J., We Concur: Ruvalo, P.J., Rivera, J. (Not for Publication.)

**A121487 – Joseph Royse, v. Jonathan Phelps et al.**

By The Court: The petition for rehearing filed by appellant on April 22, 2009, is denied. The opinion filed herein on April 15, 2009, is ordered modified at page 4 to delete the last two sentences ("Even if the court had considered. . . Phelps was no longer listed as a manager.") of the first full paragraph, and substitute the following: "Even if the court had considered the documents for the truth of their contents, they do not conclusively show that Phelps was a manager of Heartworks at the time of the accident, and the court relied on deposition testimony showing that Esther Phelps alone owned Heartworks in granting Phelps's motion for summary judgment." Footnote 2 remains the same. There is no change in the judgment. Ruvalo, P.J. (Not for Publication.)

Division Five

**A121882 – In re Cameron A., a Person Coming Under the Juvenile Court Law. The People, v. Cameron A.**

The matter is remanded to the trial court to modify the weapons probation condition in accordance with the views expressed herein. In all other respects the order is affirmed. Simons, J., We Concur: Jones, P.J., Bruiniers, J.<sup>40</sup> (Not for Publication.)

**A120503 – The People, v. Alan Lawrence Ager.**

The judgment is affirmed. Bruiniers, J.<sup>41</sup> We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A119300 – The People, v. Quincy Powell, Jr.**

The matter is remanded for resentencing in regard to the enhancements for prior serious felony convictions under Penal Code section 667, subdivision (a), and

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for compliance with Penal Code section 669. The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A122677 – In re C.P., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency, v. Chaunessey P.**

The appeal is dismissed as moot. Bruiniers, J.,<sup>42</sup> We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

**A122663 – In re A.O., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services, v. Derek T.**

The order terminating Derek's parental rights is affirmed. Jones, P.J., We Concur: Needham, J., Bruiniers, J.<sup>43</sup> (Not for Publication.)

**A120168 – Lee Barfield, v. Ecology Control Industries, Inc.**

The trial court's order denying appellant's motion to compel arbitration is reversed and this matter is remanded with instructions that the court enter a new order

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<sup>40</sup> Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>41</sup> Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>42</sup> Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>43</sup> Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

granting the motion. Appellant is awarded its costs on appeal. Simons, J., We Concur: Jones, P.J., Bruiniers, J.<sup>44</sup> (Not for Publication.)

**A122799 – In re H.H., a Person Coming Under the Juvenile Court Law. The People, v. H.H.**

The dispositional order is reversed. On remand, the juvenile court shall vacate its order denying the suppression motion, enter a new order granting the motion, and allow the minor to withdraw his plea. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

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<sup>44</sup> Judge of the Contra Costa Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.